

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA

NO. C09-1505

Plaintiff,

ANSWER AND AFFIRMATIVE DEFENSES

v

ROBERT H. PRICE, MD

Defendant.

COMES NOW Defendant and in answer to Plaintiff's Complaint states the following:

1. In answer to Paragraphs I, and II of Plaintiff's Complaint, Defendant admits the same.

2. In answer to Paragraph III of Plaintiff's Complaint, Defendant admits that he applied for and was granted a scholarship award through the National Health Services Corps ("NHSC") Scholarship Program within the United States Public Health Service, Department of Health & Human Services. Defendant affirmatively states that his agreement with the NHSC is set forth in written form but the Certificate of Indebtedness that is attached as Exhibit 1 is not a complete copy of the Agreement and it is unknown whether or not the complete application and

ANSWER - 1

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1 scholarship contracts are appended as Exhibits 2 and 3, and therefore Defendant denies the same,
2 as well as all other remaining portions of said Paragraph.

3 3. In answer to Paragraph 4 of Plaintiff's Complaint, Defendant admits demand has
4 been made for payment but denies there remains due and owing the sum of \$93,857.19.

5 4. In answer to Paragraph 5 of Plaintiff's Complaint, Defendant denies the same.

6 WHEREFORE, having fully answered Plaintiff's Complaint, Defendant states the
7 following AFFIRMATIVE DEFENSES:

8 1. Failure of Consideration.

9 A. A material element of Defendant's agreement to enter the Scholarship
10 Program with NHSC was NHSC's representation that Plaintiff would, incident to the Scholarship
11 Award, provide service of public health in a rural constituency as a general physician.

12 B. The United States Government eliminated the National Health Service
13 Program, thus eliminating the ability of NHSC, or its successor, to provide Defendant Price with
14 the agreed upon consideration of service in a rural area as a general physician.

15 C. Plaintiff instead indicated to Defendant he was to serve in a Federal Prison
16 serving Federal prisoners and caring for their health needs.

17 D. Defendant offered years ago to perform under the Contract in a rural
18 medicine context as agreed but Plaintiff refused said offer.

19 2. Impossibility.

20 E. It was impossible for NHSC to perform under the terms of its agreement
21 with Defendant and Defendant's agreement to pay should be excused.

22 3. Unconscionable

23 F. Enforcement of this Agreement would be unconscionable.

24 ANSWER - 2

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The above constitutes a material failure of consideration, releasing Plaintiff from any obligation under his agreement with Plaintiff.

4. Full Performance. Defendant has paid Plaintiff the sum of approximately \$123,000 to date on a loan amounting to approximately \$14,000. The Court, on equitable grounds should consider the loan paid in full.

5. Statute of Limitations. The statute of limitations has expired to bring this action.

WHEREFORE, having fully answered Plaintiff's Complaint and interposed affirmative defenses, Defendant seeks the following relief:

1. That Plaintiff's Complaint be dismissed with prejudice and that Plaintiff take nothing thereby.

2. That Defendant's obligation, if any, owing to Plaintiff be declared to be performed/cancelled.

3. That Defendant be awarded his reasonable attorneys' fees and costs herein as allowed by Contract.

Dated this 12 day of November, 2009.

~~COGDILL NICHOLS REIN WARTELLE ANDREWS~~

By:

W. Mitchell Ogdill, WSBA 1950
Attorney for Defendant

ANSWER - 3

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1 Robert H. Price, declares as follows:

2 I am the Defendant herein. I have read the foregoing Answer and Affirmative Defenses,
know the contents thereof and believe the same to be true and correct.

3 I declare under penalty of perjury of the laws of the State of Washington that the within and
4 foregoing is true and correct.

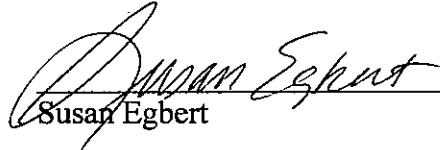
5 SIGNED at Everett, Washington this 11 day of November, 2009.

6 
Robert H. Price

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2 CERTIFICATE OF SERVICE
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I hereby certify that on November 12, 2009, I electronically filed the foregoing with the
Clerk of the Court for the United States District Court, Western District of Washington by using
the CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service
will be accomplished by the CM/ECF system.

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9 Susan Egbert
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ANSWER - 5

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